

DEPARTMENT OF STATE REVENUE

04-20200128R.MOD

Memorandum of Decision: 04-20200128R
Sales Tax
For Tax Years 2017-2018

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Business was able to provide sufficient records to show that one of its locations qualified for a sales tax exemption. The Department will therefore issue a refund reflecting the appropriate level of exemption for this location.

ISSUE

I. Sales Tax—Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015).

Taxpayer protests the partial denial of its claims for refund.

STATEMENT OF FACTS

Taxpayer owns several restaurants operating in Indiana. For one of these restaurant locations, Taxpayer filed a claim for refund of 2017 and 2018 sales tax, claiming a manufacturing exemption on taxes paid on a portion of its utilities. The Indiana Department of Revenue ("Department") denied Taxpayer's refund claim, explaining that Taxpayer did not have a completed Application for Utility Sales Tax Exemption (ST-200). Taxpayer protested this denial and an administrative hearing was held. This Memorandum of Decision results. Further facts will be supplied as necessary.

I. Sales Tax—Refund.

DISCUSSION

Taxpayer protests the partial denial of its sales tax refund claims for the 2017 and 2018 tax years. Taxpayer provided documentation along with its protest which it believes is sufficient to confirm its exemption from sales tax.

As a preliminary matter, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

When a taxpayer determines it has overpaid a tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

In applying any tax exemption, "[T]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an

exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101.

Sales tax is imposed by IC § 6-2.5-2-1, which states in part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Electricity and natural gas can be exempt from sales tax in certain circumstances outlined by IC § 6-2.5-5-1, which states in part:

- (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

Along with its protest of the refund denial, Taxpayer provided documents to support its claim, including a completed Form ST-200, monthly utility bills for 2017 and 2018, and a utility study for all of Taxpayer's restaurant locations. Because the restaurants all used the same kind of equipment, one study was completed for all locations, with calculations done separately for each store to show variation in the number of pieces of equipment. This study included the power demands from each piece of equipment and the amount of time each piece of equipment was used. The load factor for each piece of equipment was also consistent across restaurants.

Taxpayer argues that the restaurant location at issue in this protest is sufficiently similar to other locations which were previously granted exemptions by the Department. To support this, Taxpayer provided an additional Form ST-200 and a Form ST-109 exemption certificate for two different store locations in Indiana. These locations were also discussed in Taxpayer's utility study, shared the same equipment as the location at issue, and were granted exemptions.

After reviewing this documentation, the Department is able to confirm that the location at issue in this protest qualifies for an exemption in the amount requested by the Taxpayer. The refund request for 2017 and 2018 is granted. The Department notes that this decision does not constitute an on-going recognition of exempt percentages. Taxpayer may not rely on this decision as it would be able to rely on an ST-109. Taxpayer will be required to go through the entire protest process on refund claims for any restaurants for which it does not have an ST-109. Therefore, Taxpayer is encouraged to apply for an ST-109 to streamline future refund claims.

FINDING

Taxpayer's protest is sustained.

July 23, 2020

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